Supreme Court of the United States

OCTOBER TERM, 1957

No. 92

UNITED STATES OF AMERICA, APPELLANT,

vs.

CHARLES T. HVASS

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

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[fol. 1] CAPTION—Omitted in printing

[fol. 2] IN THE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION

UNITED STATES OF AMERICA, *Plaintiff*,

v.

CHARLES T. HVASS, *Defendant*.

INDICTMENT—Filed March 20, 1956

The Grand Jury Charges:

COUNT I

That CHARLES T. HVASS, on or about October 12, 1955, at Mason City, in the United States District Court in the Central Division of the Northern District of Iowa, in violation of Section 1621, Title 18, United States Code, having duly taken an oath administered by the Clerk of said court, at a hearing in a matter then and there pending before said court in which a law of the United States authorizes an oath to be administered, that he would testify truly, did unlawfully, wilfully, and knowingly, and contrary to said oath, state material matters which he did not believe to be true, that is to say:

That at the time and place aforesaid, and in a hearing conducted in said court upon the application of said Charles T. Hvass requesting his temporary admission to the bar of said court under and pursuant to the provisions of Rules 3 and 8, Local Rules of the United States District Court, Northern District of Iowa, the said Charles T. Hvass appeared as a witness on his own behalf, and gave testimony under oath to make satisfactory showing of his compliance with standards of professional ethics as is required of attorneys for such admission under said rules.

[fol. 3] That it was material to the determination of matters brought before the court at said hearing, to as-

certain true facts as to whether or not Charles T. Hvass, or any member or agent of the firm of attorneys with which he was then associated, or anyone on his or their behalf (1) had solicited prospective litigants to secure the employment of the said Charles T. Hvass or of his firm, to represent said prospective litigants as their attorneys; (2) had offered to maintain prospective litigants in suit; or (3) had employed or otherwise engaged agents to seek and secure the employment of said Charles T. Hvass or his firm by prospective litigants; and whether or not said Charles T. Hvass was a credible witness.

That at the time and place aforesaid the defendant, duly appearing as a witness before said court, and then and there being under oath as aforesaid, did testify falsely before said court with respect to the aforesaid material matters as follows:

"Q Mr. Hvass, on any case that you have handled in Iowa or elsewhere have you—have you or anyone from your office ever solicited business?
A No, sir.
Q —or asked for employment?
A I would say absolutely not, not willingly or intentionally.
Q You are positive of that?
A Yes, sir, I am. I mean, I can speak only of my personal knowledge, and I am sure none of the men in the office would have."

That the aforesaid testimony of the defendant, as he then and there well knew and believed, was false.

[fol. 4] COUNT II

The Grand Jury realleges all of the allegations of the first three paragraphs of Count I of this indictment.

That at the time and place aforesaid the defendant, Charles T. Hvass, duly appearing as a witness before said court, and then and there being under oath as aforesaid, did testify falsely before said court with respect to the aforesaid material matters as follows:

"Q Has anyone in your office or your firm ever paid fees to anyone referring business to your office?

A No, sir, we have not. Other than an attorney with respect to a forwarding fee. Most of them want that. And I probably—between fifty and seventy-five per cent of our business comes from other lawyers, and of course other lawyers that send business to us we would do this, we would divide the fee in cases like that."

That the aforesaid testimony of the defendant, as he then and there well knew and believed, was false.

COUNT III

The Grand Jury realleges all of the allegations of the first three paragraphs of Count I of this indictment.

That at the time and place aforesaid the defendant, Charles T. Hvass, duly appearing as a witness before said court, and then and there being under oath as aforesaid, did testify falsely before said court with respect to the aforesaid material matters as follows:

"Q Have you ever offered a litigant or a prospective litigant to furnish him with funds if he required them?
A No, sir.
Q —prior to employment—
A No, sir."

That the aforesaid testimony of the defendant, as he then and there well knew and believed, was false.

[fol. 5] COUNT IV

The Grand Jury realleges all of the allegations of the first three paragraphs of Count I of this indictment.

That at the time and place aforesaid the defendant, Charles T. Hvass, duly appearing as a witness before said court, and then and there being under oath as aforesaid, did testify falsely before said court with respect to the aforesaid material matters as follows:

"Q Did you suggest that Mr. Tesar employ your firm?
A No, there was no considerable discussion. I recall this man, he had a lot of matters, he was very much concerned, and he wanted to know

what his case was worth, the best of my opinion was on it. And I believe my views on this case was far less than what he thought his case was worth. I told him—I left a contract and I told him if he wanted to retain our firm he could mail the contract to us. That was the last I ever saw or heard of him."

That the aforesaid testimony of the defendant, as he then and there well knew and believed, was false.

A True Bill

/s/ Meyer Wolff
Foreman

/s/ F. E. Van Alstine
United States Attorney.

Bail fixed in the sum of $1500.00

/s/ Henry N. Graven
HENRY N. GRAVEN

United States District Judge,
Northern District of Iowa.

[fol. 6] IN THE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

(Title Omitted)

MOTION TO DISMISS THE INDICTMENT—Filed Nov. 13, 1956

TO: UNITED STATES OF AMERICA, AND TO F. E. VAN ALSTINE, ITS ATTORNEY:

Pursuant to Rule 12 of the Federal Rules of Criminal Procedure for the District Courts of the United States, defendant above named moves the Court for its Order dismissing the Indictment on the ground that the Indict-

ment does not state facts sufficient to cause an offense against the United States.

WARREN B. KING
945 Northwestern Bank Building
Minneapolis 2, Minnesota

M. E. RAWLINGS
561 Orpheum Electric Building
Sioux City, Iowa
Attorneys for Defendant

By /s/ Warren B. King
Warren B. King

CHARLES ALAN WRIGHT
324 Townes Hall
Austin 12, Texas
Of Counsel

(File Endorsement Omitted)

[fol. 7] IN

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Criminal No. 2358

UNITED STATES OF AMERICA, *Plaintiff*,

v.

CHARLES T. HVASS, *Defendant*.

MEMORANDUM DECISION—Dec. 21, 1956

[fol. 8] This matter is before the Court upon the defendant's motion to dismiss the indictment on the ground that the same does not state facts sufficient to constitute an offense against the United States.

The defendant, Charles T. Hvass, is an attorney with his office in Minneapolis, Minnesota, and is a member in good standing of the bars of the states of Minnesota and

Texas, and has been admitted to practice before the United States District Court for the District of Minnesota, and the United States Court of Appeals for the Eighth Circuit. Hvass represented injured workmen in two suits which were filed in this court, Wyrum v. Mason City & Clear Lake Railroad Co., Civil No. 644, and Lash v. Chicago Great Western Railway Co., Civil No. 663. At the time those suits were filed in this court, Local Rule 3 of the Northern and Southern Districts of Iowa provided as follows:

> "All attorneys residing outside of the state of Iowa and having civil matters in the court shall associate with them a resident attorney on whom notice may be served and who shall have the authority to act for and on behalf of the client in all matters, including pre-trial conferences and the trial of the case. Such resident attorney shall be a member of the bar of the District, shall sign the first pleading filed and continue in the matter unless other qualified resident counsel be substituted. Non-resident attorneys who have so associated with them a resident attorney shall be permitted to participate in a particular case upon satisfactory showing of good moral character."

The evident purpose of the rule is to assure the court that when out of state attorneys appear as counsel in any case, that there will be no delays for hearings on motions, pre-trial conferences and other matters which may arise during the trial, and so that service of papers may be accomplished locally at any stage of the proceedings. A similar rule will be found in the rules of most [fol. 9] United States District Courts.

Subsequent to the commencement of the Wyrum and Lash cases, and on August 31, 1955, the judges of the Northern and Southern Districts of Iowa entered an order amending Rule 3 by adding thereto the following proviso:

> "Provided further that where the action is one to recover damages for personal injuries sustained in Iowa by one who at the time was a resident of Iowa or the action is one to recover damages for the death of a resident of Iowa resulting from personal in-

juries sustained in Iowa, the court may on its own motion, or on motion of a member of the bar of either District, before permitting a non-resident attorney to participate in the case, require a satisfactory showing that the connection of the said attorney, or the firm or attorney with which he is associated, was not occasioned or brought about in violation of the standards of conduct specified in Rule 8 hereof. The court as a part of said showing may require the plaintiff and the said attorney to appear and be examined under oath."

It is this amended Rule 3 with which we are now concerned. The amendment became effective on October 1, 1955, as to actions then pending or thereafter commenced.

On October 3, 1955, the court entered an order fixing October 12, 1955, as the date for non-resident attorneys in the Wyrum and Lash cases to appear, if they wished to participate in those actions, and be examined under oath in regard to matters within the scope of amended Rule 3. The defendant Hvass did appear, and was examined under oath by the United States Attorney. Administration of the oath to Hvass was not a part of any judicial proceeding in the Wyrum and Lash cases, but rather was a part of an administrative proceeding by which the court sought to determine whether Hvass should be permitted to participate as an attorney in those cases. Two further hearings were held, and witnesses subpoenaed both by the United States and by the defendant Hvass, were examined and cross-examined. [fol. 10] Thereafter, on November 1, 1955, the court entered an order finding that the injuries for which recovery was sought in each case were sustained in the State of Iowa by residents of Iowa, and that "the applicant has not made satisfactory showing of the matters which must be satisfactorily shown under said Local Rule 3." Thus the court denied the application of Hvass to participate in the two cases and struck the appearance of the firm of Hvass, Weisman, Peterson, King and Schwappach as attorneys for plaintiff in each case.

On March 20, 1956, the present indictment was returned, charging the defendant Hvass with the crime of

perjury under four separate counts in violation of 18 U.S.C.A. Sec. 1621.[1] The indictment charges under each count thereof that the alleged false testimony was given under and pursuant to the provisions of Rule 3, supra, and Rule 8,[2] Local Rules of the United States District Court, Northern District of Iowa.

[fol. 11] Let us first consider briefly the rule making power of a United States District Court. Such rule making power is found in 28 U.S.C.A. Sec. 2071:

> "The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules

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[1] Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury * * *.

[2] "CONDUCT AND DUTIES; DISBARMENT AND DISCIPLINE

"The standards of conduct and duties of members of the bar of the District shall be those prescribed by Chapter 610, Code of Iowa 1950, by the oath set forth in Rule 1 hereof, and by the Canons of Professional Ethics of the American Bar Association, and amendments thereto.

"For violation of such standards of conduct and duties any member of the bar of the District for good cause shown, and after an opportunity has been given to be heard, may be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the court may deem proper.

"Whenever it is made to appear to the court that any member of its bar has been disbarred or suspended from practice, or convicted of a felony in any other court he shall be suspended forthwith from practice before this court, and, unless upon notice mailed to him at his last known address, he shows good cause to the contrary within fifteen days, there shall be entered an order of disbarment, or of suspension for such time as the court shall fix.

"Any person who before his admission to the bar of this court, or during his disbarment or suspension, exercises in the District in any action or proceeding pending in the court any of the privileges of a member of the bar, or who pretends to be entitled so to do, shall be guilty of contempt of court, and shall subject himself to appropriate punishment therefor."

shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court."

Rule 83 of the Federal Rules of Civil Procedure is as follows:

"RULES OF DISTRICT COURTS:

"Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules."

Thus Congress and the Supreme Court of the United States have recognized the necessity of broad rule making powers of the courts to enable them to prescribe complete and uniform modes of procedure. It appears, however, that Sec. 1621 and Rule 83, supra, were intended only to cover matters of practice and procedure. Likewise amended Rule 3 was promulgated for the purpose of determining the fitness of lawyers falling within its [fol. 12] terms, to participate in certain actions before the court. Following the oral hearings at which the defendant Hvass testified, the Court determined that he had not made a satisfactory showing under Rule 3 and he was denied the right to participate in the Wyrum and Lash cases. Without question a United States District Court has the right to determine the fitness of attorneys who may practice in such court. See the recent case of In re Wasserman, —— F.2d ——, 9th Cir., October 2, 1956. However, after Rule 3 had served its purpose and the court denied the defendant Hvass the right to participate in the Wyrum and Lash cases, the United States now seeks to prosecute him for perjury based upon the testimony given by him at these hearings. In seeking to do so, it appears to me that the United States is going far beyond what Congress intended in granting the rule making power to the courts.

The essential elements of the crime of perjury as defined in 18 U.S.C.A. Sec. 1621 are (1) an oath authorized by a law of the United States, (2) taken before a competent tribunal, officer or person, and (3) a false statement wilfully made as to facts material to the hearing. United States v. Debrow, 346 U.S. 374. Under point one above, we recognize that generally speaking a rule of court has the force of law. In re Giannini, Inc., 90 F.2d 445; Galveston Dry Dock & Construction Co. v. Standard Dredging Co., 40 F.2d 442. We are here confronted with an unusual situation, namely, a perjury indictment, predicated upon a rule of court that is in itself rather unique and unusual. It gives to the court the discretion to determine when the attorney shall be required to make a satisfactory showing in regard to Rule 8, supra, and the further discretion to place the witness under oath. The purpose of the rule was accomplished when Hvass [fol. 13] was denied the right to participate in the Wyrum and Lash cases and if disciplinary action against the defendant Hvass is deemed advisable such action should be instituted in the regular manner.

The defendant urges that Rule 3 is invalid upon several grounds and contends that his motion to dismiss the indictment must be sustained for this reason. In my opinion it is not necessary for me to pass upon this question. I simply hold that Rule 3, under which the defendant took his oath, is not such a law of the United States as was intended by Congress to support an indictment for perjury.

The defendant's motion to dismiss will be granted. Defendant's counsel may prepare and submit a formal order dismissing the indictment, and as to all four counts thereof.

Dated this 20th day of December, 1956.

BY THE COURT:

/s/ George T. Mickelson
United States District Judge

By Assignment to the Northern District of Iowa

[fol. 14]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, *Plaintiff*,

v.

CHARLES T. HVASS, *Defendant*.

ORDER DISMISSING INDICTMENT—Dec. 27, 1956

The defendant's motion to dismiss the indictment having been noticed for hearing and heard on November 13, 1956, the plaintiff appearing by Mr. F. E. Van Alstine, United States Attorney, and Mr. T. G. Gilinsky, Assistant United States Attorney, and the defendant by Messrs. Warren B. King and M. E. Rawlings, their respective attorneys, and the Court being advised in the premises,

IT IS ORDERED, that the motion be granted and judgment entered dismissing the indictment, and all four counts thereof, for failure to state facts sufficient to constitute an offense against the United States.

BY THE COURT:

/s/ George T. Mickelson
United States District Judge

By Assignment to the Northern
District of Iowa

Dated: December 27, 1956.

(File Endorsement Omitted)

[fol. 15]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

STATEMENT OF DOCKET ENTRIES

1. Indictment for violation of Sec. 1621, Title 18, United States Code—Counts I, II, III, IV: Unlawfully, knowingly and contrary to the oath taken by

him, administered by the Clerk of the United States District Court at a hearing in a matter pending before said court in which a law of the United States authorizes an oath to be administered, stating material matters which he did not believe to be true.

Filed March 20, 1956.

2. Court Order providing that all proceedings in this case will be handled by the Hon. George T. Mickelson, U. S. District Judge, District of South Dakota, by assignment to this District.

Filed March 21, 1956.

3. Defendant's Notice of Motion and Motion for an order staying proceedings.

Filed May 24, 1956.

4. Court Order providing that all further proceedings in this matter be stayed pending a decision of the United States Court of Appeals for the Eighth Circuit in the case of William H. DeParcq v. United States District Court for the Southern District of Iowa and The Honorable William F. Riley, as Judge Thereof, Civil No. 15,507, and pending further order of Court.

Filed May 25, 1956.

5. Defendant's Motion to Dismiss the Indictment.

Filed November 13, 1956.

6. Stipulation of parties that the hearing upon defendant's motion to dismiss indictment shall be heard and argued in open Court at Sioux City, Iowa, beginning at 10:00 o'clock in the forenoon of the 13th day of November, 1956, and submitted as the Court may direct; and Order of Court approving said Stipulation.

Filed November 13, 1956.

[fol. 16] 7. Hearing on defendant's Motion to Dismiss the Indictment before the Hon. George T. Mickelson, United States District Judge, by Assign-

ment to the Northern District of Iowa, held at Sioux City, Iowa,

On November 13, 1956.

8. Memorandum Decision signed on December 20, 1956, by the Hon. George T. Mickelson, United States District Judge, providing that defendant's Motion to Dismiss will be granted; that defendant's counsel may prepare and submit a formal order dismissing the indictment, and as to all four counts thereof.

Filed Dec. 21, 1956, and entered in Minutes Record No. 19, Pages 160-66.

9. Court Order signed by the Hon. George T. Mickelson, United States District Judge on December 27, 1956, that the defendant's Motion to dismiss the indictment be granted and judgment entered dismissing the indictment and all four counts thereof, for failure to state facts sufficient to constitute an offense against the United States.

Filed Dec. 27, 1956, and entered in Minutes Record No. 19, Page 167.

10. Plaintiff's Notice of Appeal to the United States Court of Appeals, Eighth Circuit, from the ruling and judgment in this case.

Filed in duplicate January 16, 1957.

11. Clerk's Certificate of mailing of copies of plaintiff's Notice of Appeal to the United States Court of Appeals, Eighth Circuit, on January 16, 1957, to counsel of record for defendant.

Filed January 16, 1957.

12. Letter from Mr. E. E. Koch, Clerk, United States Court of Appeals for the Eighth Circuit, St. Louis, Missouri, showing that the appeal in this case was docketed in said Court on January 22, 1957, under No. 15710.

Filed January 24, 1957.

13. Plaintiff's Notice of Appeal to the Supreme Court of the United States from the Order of December 27, 1956, dismissing the indictment which charged perjury in violation of 18, U.S.C. 1621; and attached Certificate of Service by Mail, signed by F. E. Van Alstine, U. S. Attorney, showing that copies of said Notice of Appeal to the Supreme Court of the United States were mailed on January 24, 1957, to counsel of record for appellee, as follows: Warren B. King, King & McGregor, 945 Northwestern Bank Building, Minneapolis 2, Minnesota; Mr. M. E. Rawlings, 561 Orpheum-Electric Building, Sioux City 1, Iowa.

Filed January 24, 1957.

Attest: /s/ Lee McNeely
Clerk

[SEAL]

Dated: February 9, 1957.

[fol. 17] IN THE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Criminal No. 2358

UNITED STATES OF AMERICA, *Plaintiff*,

v.

CHARLES T. HVASS, *Defendant*.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 24, 1957

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of December 27, 1956, dismissing the indictment which charged perjury in violation of 18 U.S.C. 1621.

The appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Transcript of docket entries.
2. The indictment.
3. Motion to dismiss the indictment.
4. Memorandum decision of the District Court filed December 21, 1956.
5. Order dismissing the indictment filed December 27, 1956.
6. Notice of appeal.

[fol. 18] III. The following question is presented by this appeal:

Whether false testimony under oath in an examination conducted pursuant to a rule of the District Court was in a "case in which a law of the United States authorizes an oath to be administered" so as to come within the purview of the federal perjury statute, 18 U.S.C. 1621.

/s/ F. E. Van Alstine
F. E. Van Alstine
United States Attorney
Northern District of Iowa

[fol. 19] Certificate of Service By Mail

(Omitted in Printing)

[fol. 20] Clerk's Certificate to foregoing Transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

(Title Omitted)

Order Postponing Jurisdiction—June 3, 1957

Appeal from the United States District Court for the Northern District of Iowa.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. The case is transferred to the summary calendar.

June 3, 1957

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